

DREXEL UNIVERSITY

Comptroller's Office

POLICY: INDEPENDENT CONTRACTOR CLASSIFICATION

Effective Date: March 15, 2010

I. PURPOSE:

Drexel University (the "University") engages a wide range of outside service providers and consultants. Some of these service providers and consultants are corporate entities or partnerships, while others are sole proprietors or individuals. Depending upon a number of factors outlined in this Policy, in certain instances an individual service provider must be classified by the University as an employee, subject to tax withholding, and may not be treated as an independent contractor. Therefore, with respect to all service providers who are either individuals or sole proprietors, it is important that the University evaluate each individual service provider's relationship to the University to ensure that such service provider is properly classified as either an employee or an independent contractor. Federal and state laws govern when an employee-employer relationship exists in the workplace. Employers who fail to follow these guidelines and misclassify employees as independent contractors are subject to significant penalties under the law. This Policy exists to ensure that the University consistently and fairly classifies its workers and complies with state and federal guidelines and to protect the University from penalties or other adverse action.

II. SCOPE:

This Policy applies to all transactions in which the University seeks to engage the services of an individual or sole proprietor (an "Individual Service Provider" or "Service Provider"). If the Service Provider is a **partnership** or a **corporation** rather than an individual, in the absence of unusual circumstances, the Service Provider will automatically be considered an independent contractor. A transaction between the University and a **limited liability company** may be subject to this Policy if the limited liability company is considered a "disregarded entity" for federal tax purposes.

III. COVERED MEMBERS OF THE UNIVERSITY COMMUNITY:

This Policy applies to all University trustees, officers and employees who contract for services on behalf of the University and/or any of its subsidiaries or affiliates.

IV. POLICY:

All supporting documentation referenced in this Policy must be completed and signed BEFORE SERVICES ARE RENDERED by the Individual Service Provider. In the event that the Internal Revenue Service ("IRS") determines that employee status should have applied to an Individual Service Provider, all taxes, penalties and interest assessed against the University will be charged to the contracting school/department.

V. PROCEDURES:

The following documentation must be completed for every transaction in which the University seeks to engage the services of an Individual Service Provider. Each of these requirements is described in more detail below.

- The Certification for Determination of Independent Contractor Status (the “Certification”);
- Signed independent contractor or consulting agreement; and
- IRS Form W-9, Request for Taxpayer Identification Number and Certification.

A. Certification for Determination of Independent Contractor Status:

The Certification must be satisfactorily completed by every Individual Service Provider and reviewed and signed by the University employee responsible for contracting the services, as well as the supervisor of the University employee, each attesting to the completeness and accuracy of the Certification, PRIOR to the performance of any services for the University. The supervisor of the University employee must have appropriate signature authority to enter into a contract with the Individual Service Provider. In addition, the fully completed Certification must be reviewed and approved by the Office of Tax Compliance to confirm that the information provided demonstrates that the Individual Service Provider meets the requirements for classification as an independent contractor. Submit the Certification to the Office of Tax Compliance, Suite 420, 3201 Arch Street, Philadelphia, Pennsylvania 19104. The Certification form is available [here](#).

With certain limited exceptions for honoraria and one-time lecture fees in amounts less than \$600 (see Section E (3) below), no payments will be made to Individual Service Providers unless a properly completed and approved Certification is on file with the Comptroller’s Office.

The Comptroller’s Office will not require a new Certification for each subsequent payment to an Individual Service Provider. On each succeeding Check Request Form during the period of service, the business administrator should indicate that there is an approved Certification on file with the Comptroller’s Office. The University requires a new Certification on an annual basis. It is the responsibility of the University employee contracting for the services to obtain and submit a new Certification on an annual basis. If there is a significant change in the nature of the service provided or in the Individual Service Provider’s relationship with the University, a new Certification must be submitted.

B. Independent Contractor or Consulting Agreement:

The engagement of an independent contractor or consultant must be set forth in a written agreement. Please refer to the Contract Protocol (OGC-3) <http://www.drexel.edu/generalcounsel/drexelpolicies/ogc-3/> for guidance with respect to the procedure for the review of contracts by the Office of the General Counsel (the “OGC”). The OGC has developed a standard form contract for use with independent contractors and a standard form

contract for use with consultants. Please contact the OGC at (215) 895-1433 to determine whether the use of a form contract is appropriate and to initiate the contract protocol review process.

C. IRS Form W-9:

Every Individual Service Provider must complete and submit an IRS Form W-9, Request for Taxpayer Identification Number and Certification, available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. The contracting business administrator must submit (1) Form W-9, (2) the contractor or consulting agreement and (3) the Service Provider's invoice along with the Check Request Form. All documents must be forwarded to Accounts Payable, 3201 Arch Street, Suite 400, Philadelphia, Pennsylvania 19104 to initiate the payment process.

D. General Guidelines for the Determination of Whether an Individual Service Provider is an Employee or an Independent Contractor:

The determination of whether an Individual Service Provider is an employee or an independent contractor depends upon the facts and circumstances of each case. In general, the more control the University has over a Service Provider, the more likely it is that the Service Provider is an employee rather than an independent contractor. Facts that provide evidence of the degree of control and independence fall into three categories: **behavioral control, financial control, and the nature of the relationship between the parties.**

1. "Behavioral control" relates to whether the University has a right to direct and control how the Service Provider performs the task for which they are hired. In general, anyone who performs services for the University is an employee if the University has the right to control what will be done and how it will be done. Some of the factors to be considered are:

- Is the Service Provider required to comply with instructions about when and where to do the work? Does the University specify the order or sequence to follow in performing the work?
- Does the University train and supervise the Service Provider?
- Does the University determine what tools or equipment to use?
- Does the University direct what workers to hire or assist with the work?
- Does the University direct where to purchase supplies and services?
- Does the University specify what work must be performed by a specified individual?

2. "Financial control" looks at whether a Service Provider has the ability to affect financial decisions in connection with the services performed. Some of the factors to consider are:

- Does the Service Provider have a significant investment in assets or tools?
- Can the Service Provider realize a profit or loss as a result of the work to be performed?

- Are there unreimbursed expenses that the Service Provider is solely responsible for?
- Are the Service Provider's services available to the public? Does the Service Provider advertise?
- What is the method of payment? Will the Service Provider get paid whether or not the work is done, or do they get paid only if they finish the job?
- Can the Service Provider make business decisions that affect his/her bottom line?

3. "Relationship of the parties" looks at how the parties perceive their relationship. Some of the factors to consider are:

- Is there a written contract between the Service Provider and the University?
- Does the Service Provider get any type of benefits – vacation and sick pay, pension plan and health or life insurance?
- Is the relationship between the University and the Service Provider expected to be permanent, or will it continue only for a specific project or period?
- Are the Service Provider's activities an integral part of the University's overall mission and purpose?

E. Special Situations:

1. Current or Former Employees:

Under IRS rules, in most cases where the Individual Service Provider is currently a University employee, or has been an employee during the current calendar year, and is to be engaged for work outside his/her normal duties, the IRS will consider the Service Provider an employee. The information provided on the Certification must justify treating an employee/Service Provider as an independent contractor and be approved by the Office of Tax Compliance PRIOR to the performance of services. Where necessary, the Office of Tax Compliance will require the contracting employee to provide additional details about the nature of the engagement for purposes of determining such status. To substantiate the University's determination in the event of an inquiry by the IRS, such authorization will be given only if it can be **clearly demonstrated** that the Service Provider is performing duties that are **fundamentally different** from those regularly performed in his/her capacity as an employee. **If the Individual Service Provider has been an employee of the University in a prior calendar year, particular care must be given to evaluating the information provided on the Certification regarding the individual's status.**

2. Students:

If the Individual Service Provider is a student at the University, the same classification rules will be applied and all required documents must be completed and submitted to the Office of Tax Compliance in order for a student to be classified as an independent contractor. **As a general rule, students will most often be appropriately characterized as employees, not as independent contractors.** Due

to immigration as well as tax considerations, **international students can not be characterized as independent contractors and must be classified as employees.**

3. Speakers/Lecturers/Colloquium Participants:

The only blanket exception to the requirement for the Certification is for honoraria payments of less than \$600. An honorarium is a one-time payment to give a talk, lecture or participate in a colloquium. However, for all honoraria payments – regardless of amount – a completed Form W-9 must be filed with the Comptroller's Office. For honoraria payments in excess of \$600, all documents mentioned under procedures in Part V above must be submitted to the Office of Tax Compliance for approval before payment will be made. The IRS requires all such payments to be reported on Form 1099-MISC as miscellaneous income.

Special rules apply to **Foreign Individual Service Providers**. Employees contracting with Foreign Individual Service Providers must contact the Office of Tax Compliance in advance of the engagement at taxoffice@drexel.edu or (215) 895-6880.

VI. VIOLATION OF THIS POLICY:

Violation of this policy and procedure or failure to timely cooperate in complying with its provisions by any individuals who contract for services on behalf of the University may result in disciplinary action up to and including dismissal.